IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.11.2006

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

C.M.A.Nos.1061 and 1062 of 2001

National Insurance Co. Ltd.,
Villupuram. .. Appellant in both the appeals(III Respondent)

vs.

1. Vaidyanathan
2. Sengeni
3. Chinnaswamy
4. Divisional Manager,
United India Insurance Co. Ltd., Cuddalore.
5. Ramesha Bevi
6. New India Insurance Co. Ltd.,
Bharathi Road, Cuddalore.

(Respondents 4,5 and 6 given up in CMA.No.1061 of 2001 and third respondent in C.M.A.No.1061 of 2001 ex-parte in lower Court) .. Respondents in C.M.A.No.1061 of 2001 (Respondents 1 & 2 petitioners I & II and Respondents 3 to 6)

1. Sengeni Ammal
2. Chinnaswamy
3. Divisional Manager,
United India Insurance Co. Ltd., Cuddalore.
4. Ramesha Bevi
5. New India Insurance Co. Ltd.,
Bharathi Road, Cuddalore.

(Respondents 3,4 and 5 given up in C.M.A.No.1062 of 2001 and second respondent in C.M.A.No.1062of 2001 ex-parte in lower Court) .. Respondents in C.M.A.No.1062 of 2001

Civil Miscellaneous Appeal No.1061 of 2001 u/s 173 of MV Act filed against the award and decree dated 25.10.1999 in M.C.O.P.No.38 of 1996 on the file of the Motor Accidents Claims Tribunal, Panruti.

Civil Miscellaneous Appeal No.1062 of 2001 filed u/s 173 of MV Act against the award and decree dated 25.10.1999 in M.C.O.P.No.671 of 1996 on the file of the Motor Accidents Claims Tribunal, Panruti.

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For appellant in both the appeals: Mr.H.Md.Ismail for
Mr.N.Vijaya Raghavan

For respondents 1 and 2 in
C.M.A.No.1061 of 2001 and
respondent No.1 in
C.M.A.No.1062 of 2001 : Mr.Rajaraman

JUDGMENT

These two appeals have been filed by the National Insurance Company Limited, Villupuram against the common award passed in three different Motor Accidents Claim Original Petitions. The appellant however has chosen to prefer these appeals only as against O.P.Nos.38 of 1996 and 671 of 1996.

2. According to the claimants, the accident occurred on 31.5.1992 at about 11.15 p.m. when the claimants were alighting from a private transport bus bearing Registration No.TAM-9595 at Rajapalayam Bus Stand and at that point of time, the transport bus was hit from behind by a lorry bearing Registration No.TN-31-Z-0021 belonging to the first respondent in O.P.No.38 of 1996 before the Tribunal, which was stated to have been driven by the driver of the lorry in a rash and negligent manner. While the claimants in O.P.No.38 of 1996 are the parents of the deceased girl aged about 9 years, the claimant in O.P.No.671 of 1996 was by the mother for the injuries sustained by her. C.M.A.No.1061 of 2001 has been filed as against the award in O.P.No.38 of 1996 and C.M.A.No.1062 of 2001 has been filed as against the award in O.P.No.671 of 1996. In O.P.No.38 of 1996 as against the claim of Rs.1 lakh preferred by respondents 1 and 2 in C.M.A.No.1061 of 2001, the Tribunal has awarded a sum of Rs.75,000/- and in O.P.No.671 of 1996 as against the claim of Rs.30,000/- made by the first respondent in C.M.A.No.1062 of 2001, the Tribunal has awarded a sum of Rs.8,000/- for the injuries sustained by her.

3. In these appeals, the challenge is only to the legal issue, namely whether the lorry bearing Registration No.TN-31-Z-0021 was covered by a valid policy insured with the appellant.

4. The policy has been marked as Ex.B-4 and the xerox copy of which has also been marked as Ex.B-7 before the Tribunal. According to the appellant, the third respondent in C.M.A.No.1061 of 2001 who is the owner of the lorry made a misrepresentation about the make of the vehicle while securing the policy on 12.8.1991, that while securing the policy, the third respondent claimed that the vehicle for which the policy was applied for was TVS-50 XL-1989 model, that based on his representation, the policy was also issued for that vehicle and that therefore, the said policy would not cover the lorry which actually involved in the accident. It is relevant to note that the policy did mention the Registration mark and number of the vehicle correctly as TN-31-Z-0021. The Tribunal rejected the stand of the appellant by holding

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that when the Registration number tallied with the vehicle of the lorry and under Ex.X-1 marked through the Inspector of Regional Transport Office, Villupuram, mentioning that the said Registration Number belong to a heavy vehicle, which is a goods carrier, the stand of the appellant that the policy did not cover the said vehicle, cannot be accepted.

5. Learned counsel for the appellant-Insurance Company while reiterating its contentions on that issue in these appeals, contended that under Section 149(2)(b) and (6) of the Motor Vehicles Act, when the appellant was able to show that the policy was void on the ground that the third respondent made a false representation of the fact, namely different description of the vehicle, the appellant was not liable to pay the compensation. Learned counsel contended that when once in the policy, the description of the vehicle has been made as TVS-50 1989 model, the said fact should be taken to have been recorded based on a representation made by the third respondent-owner of the vehicle and when the said vehicle has nothing to do with the lorry said to be belonging to the third respondent, by virtue of Section 149(2)(b), the appellant should be exonerated of the liability.

6. As against the above submissions, learned counsel appearing for respondents 1 and 2 would contend that the Tribunal did consider the contention of the appellant and after examining Ex.B-4 = Ex.B-7 as well as Ex.X-1 and the evidence of R.W.1, has come to a correct conclusion that the lorry which was involved in the accident was duly covered by the policy issued by the appellant and therefore, the said finding of the Tribunal does not call for any interference. Learned counsel also pointed out on the very same grounds, when the claimant of the other claim came to be awarded by the Tribunal in O.P.No.672 of 1996, the appellant having chosen to accept the award, cannot be allowed to approbate and reprobate.

7. Having heard learned counsel for the respective parties, I find that the contention of the appellant based on Section 149 of the Motor Vehicles Act cannot be countenanced. A reading of Section 149(2)(b) of the Act discloses that the insurer would be entitled to defend the claim on the ground that the policy itself is void because of a representation of fact which was false in some material particulars. Therefore, the burden is on the appellant to have shown that there was misrepresentation of fact which was proved to be a false one in material particulars. The issuance of Ex.B-4 = Ex.B-7 by the appellant is not in dispute. In fact, the particulars filled in different columns including the column relating to make and model, year of manufacture and registration mark and the number, have all been filled up in the office of the appellant. Significantly, none was examined from the office of the appellant to state about the fact that such particulars were furnished by the third respondent either orally or in writing to the appellant to state that based on those particulars furnished by the third respondent, Ex.B-4 = Ex.B-7 came to be filled up by the appellant. When the registration mark and number have been correctly mentioned in the relevant column of Ex.B-4 = Ex.B-7 as

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well as the name and address of the third respondent in the column meant for it, it will have to be stated that such particulars were filled up by referring to the concerned Registration Certificate issued by the Regional Transport Authority concerned. If such statement of fact had been noted from a statutory document, namely the Registration Certificate, it is hard to believe that as regards the make and model alone, misrepresentation was made. If such a stand of the appellant were to be accepted, there should have been acceptable legal evidence to show that inspite of due diligence, the third respondent herein made a deliberate false representation with reference to the fact and material particulars as regards the description of the vehicle, which made the officers of the appellant to believe those facts in material particulars while issuing Ex.B-4 = Ex.B-7. Such an exercise not having been properly demonstrated before the Tribunal, it will be wholly unsafe to merely rely upon a description made in the column relating to make and model and year of manufacture in Ex.B-4 = Ex.B-7 especially when the Registration number of the vehicle tallies with the Registration number of the lorry which was involved in the accident, in order to hold that the third respondent made a misrepresentation with reference to the fact while securing the policy and therefore, the liability cannot be fastened on the appellant.

8. Having regard to the said conclusion, I do not find any fault in the conclusion of the Tribunal in the impugned award holding that the third respondent's lorry was covered by a policy in Ex.B-4 = Ex.B-7 and consequently, the appellant was squarely liable to pay the compensation. The appeals do not merit any consideration and the same are dismissed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Motor Accidents Claims Tribunal, Panruti.

2. The Section Officer, VR Section High Court Madras.

+ 2 ccs to Mr. M. Vijayaraghavan, Advocate, SR No.51836
+ 2 ccs to Mr. M. Rajaraman, Advocate, SR No.51545, 51544

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